

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 18, 2013

In the Matter of PIANOWSKI, Minors.

No. 313915

Wayne Circuit Court

Family Division

LC No. 11-503087 NA

Before: STEPHENS, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

This Court reviews orders terminating parental rights for clear error. *In re Rood*, 483 Mich 73, 90-91, 126 n 1; 763 NW2d 587 (2009); MCR 3.977(K). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Clear error exists “if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). A trial court may consider evidence on the whole record in making its best-interest determination. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000).

The trial court did not clearly err in finding that the statutory grounds were established by clear and convincing evidence. The conditions that led to petitioner’s intervention were respondent’s substance abuse, inadequate parenting skills, domestic violence with the children’s mother, and mental instability. In September 2011, respondent’s three children became temporary court wards after respondent admitted that he had used drugs in the family home and that his substance abuse negatively impacted his ability to parent. Respondent also admitted that he and the children’s mother had a domestically violent relationship and that he had blackened her eyes in May 2011. In October 2011, respondent was ordered to comply with and benefit from a case service treatment plan that included: (1) inpatient substance abuse treatment, (2) individual counseling, (3) psychological and psychiatric evaluations and following all recommendations, (4) weekly random drug screens, (5) parenting classes, (6) domestic violence counseling, and (7) parenting time. Respondent was also ordered to maintain suitable housing and have a sufficient legal income.

The trial court properly concluded that respondent had not complied with or benefited from his treatment plan, which was designed primarily to address his substance abuse, domestic

violence, and mental health issues. Respondent's claim that he made strides to comply with his treatment plan is not supported by the lower court record. Respondent notes that he was engaged in counseling at the time of the termination and that respondent's counselor told respondent that no further counseling was needed. However, the proofs clearly showed that respondent failed to achieve a drug-free lifestyle. He was referred to substance abuse treatment at least three times. In April 2012, he left inpatient treatment against medical advice after just five days. He was immediately re-referred for outpatient in-home substance abuse counseling in May and again in September 2012 and was terminated twice for nonparticipation. Respondent chronically either missed random drug screens or tested positive for cocaine along with opiates for which he did not have a valid prescription. At the termination hearing, respondent admitted that he would test positive that day for Xanax and opiates and that he had recently been charged with driving under the influence of drugs. According to the evaluating psychologist, respondent was unlikely to benefit from psychotherapy; the psychologist found that respondent was likely to resist psychological interpretation, argue with others, rationalize, and blame others for his problems. Additionally, respondent's therapist reported that respondent was not participating in sessions and appeared to have just given up. Just before the termination hearing, the therapist concluded that respondent was not benefiting from her services. Thus, the trial court correctly found that respondent had a chronic substance abuse issue and that, despite support services, respondent's behaviors and drug dependence remained unchanged.

The evidence also showed that respondent failed to adequately address his domestic violence and mental health issues. It is beyond dispute that respondent and the children's mother had a domestically violent relationship spanning more than 13 years. Respondent argues that the trial court improperly concluded that he had not benefited from domestic violence counseling, noting that domestic violence charges that were made after he completed counseling were later dismissed. This argument is unpersuasive. There was clear evidence that respondent failed to benefit from services and remained unable to control his anger. After completing the domestic violence and anger management program, he had a physical altercation with the children's mother, leaving bruises on her arm. During the termination hearing, he minimized the severity of his violent relationship with the children's mother, claiming that they fought perhaps once a year and that his son called the maternal grandmother merely to mediate and not to come rescue the children. Respondent believed that Children's Protective Services got involved with the family for untold reasons. However, the proofs showed a very different scenario. Respondent and the children's mother fought constantly. Their oldest son knew, from the time he was three years old, to call 911 and then his grandmother to rescue him from the home. Moreover, respondent showed a complete lack of insight into the harmful effects of the domestic violence, particularly on this oldest child, and attributed the child's aggressive behavior to his placement in foster care for a year rather than what he had repeatedly witnessed in the home. The absence of domestic violence charges is irrelevant.

In a similar vein, respondent was unwilling to acknowledge and address his mental health issues. He challenged his recent diagnosis of a psychotic disorder with hallucinations. "They're not hallucinations. That's the doctor's perspective. . . . I've seen ghosts ever since I was a child." He was unwilling to take the recommended psychotropic medications because he did not want to stop seeing the ghosts. Clearly, after more than a year of services, respondent failed to rectify the issues that brought his children before the court. Therefore, termination was proper under MCL 712A.19b(3)(c)(i).

These proofs similarly satisfied the other two statutory grounds for termination. Respondent remained unable to properly provide for his children and keep them out of harm's way. He had more than a year to overcome his drug addiction, acquire mental stability, and provide a safe home environment. At the termination hearing, he had very limited income from working a part-time job, and his unemployment benefits were about to end. Respondent failed to benefit from reunification services that were provided before and after the children's removal. The trial court did not clearly err in finding that there was no reasonable expectation that respondent would be able to provide his children with proper care and custody within a reasonable time considering their ages. Whether a parent has benefited from services is relevant in assessing whether a child will be at risk if placed in the parent's home. *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005). The proofs clearly showed that the children would be at a substantial risk of harm if they were returned to respondent's custody because he continued to abuse drugs, lacked insight in his mental health needs, and was unable to control his anger.

The record also establishes that terminating respondent's parental rights was in the children's best interests. MCL 712A.19b(5). Respondent offered some proof that he had a bond of love, affection, and other emotional ties with his children. However, respondent continued to live a life filled with substance abuse, untreated mental health issues, and ongoing domestic violence with the children's mother. The case worker opined that respondent did not show the capacity to rectify issues within a reasonable time. Thus, she testified, it was not in the children's best interests to give him more time as the children were growing older. He had not shown a commitment toward getting his life together so he could care for his children. Moreover, the proofs showed that the children had adjusted well in their placement with their maternal grandparents and the two older children expressed their desire to continue living there. The grandparents were not amenable to a guardianship because they and the children needed stability and permanency. Based on a review of the whole record, the trial court correctly ruled that terminating respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Kurtis T. Wilder
/s/ Donald S. Owens